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ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
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Attorney for Plaintiffs

**FILED**

**DEC 05 2005**

**Thomas N. Lyons  
J.S.C.**

By: Frank A. Coppa  
Deputy Attorney General  
(973) 877-1399

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: UNION COUNTY  
DOCKET NO. *UNN-C-197-05*

PETER C. HARVEY, Attorney General  
of the State of New Jersey, and  
KIMBERLY S. RICKETTS, Director  
of the New Jersey Division of  
Consumer Affairs,

Plaintiffs,

v.

ROCMEN ENTERPRISES, INC. d/b/a  
MICHAEL D'S, MICHAEL A.  
DICECILIA, JOHN AND JANE  
DOES 1-20, individually and as officers,  
directors, shareholders, founders, owners,  
agents, servants, employees and/or  
representatives of ROCMEN  
ENTERPRISES, INC., d/b/a MICHAEL  
D'S, and XYZ-CORPORATIONS 1-20,

Defendants.

Civil Action

**COMPLAINT**

Plaintiffs PETER C. HARVEY, Attorney General of the State of New Jersey, with offices  
located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and KIMBERLY S. RICKETTS,

Director of the New Jersey Division of Consumer Affairs ("Division"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of this Complaint, state:

### **PARTIES AND JURISDICTION**

1. The Attorney General of the State of New Jersey is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. The Director of the New Jersey Division of Consumer Affairs ("Director") is charged with the responsibility of administering the CFA and the regulations promulgated thereunder on behalf of the Attorney General.

2. By this action, the Attorney General and the Director (collectively referred to as "Plaintiffs") seek injunctive and other relief for violations of the CFA. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-1 et seq. and the regulations promulgated thereunder, N.J.A.C. 13:45A-25.1 et seq. Venue is proper in Union County, pursuant to R. 4:3-2, because it is a county in which the Defendants have advertised and/or conducted business.

3. Defendant Rocmen Enterprises, Inc. d/b/a Michael D's ("Rocmen") is a corporation established in the State of New Jersey (the "State") on January 23, 1997. Upon information and belief, Rocmen maintains a principal business office located at 601 West St. George Avenue, Linden, New Jersey 07036.

4. Rocmen's registered agent in the State and president is Marie A. DiCecilia, who maintains a mailing address of 1901 Verona Avenue, Linden, New Jersey 07036.

5. Upon information and belief, at all relevant times, defendant Michael A. DiCecilia ("DiCecilia"), has been an officer and/or director of Rocmen. Upon information and belief, at all

relevant times, DiCecilia has maintained an address of 1901 Verona Avenue, Linden, New Jersey 07036.

6. Upon information and belief, John and Jane Does 1 through 20 are fictitious individuals meant to represent the officers, directors, shareholders, founders, owners, agents, servants, employees, sales representatives and/or independent contractors of Defendants who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these Defendants are identified, Plaintiffs shall amend the Complaint to include them.

7. Upon information and belief, XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional corporations that have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these Defendants are identified, Plaintiffs shall amend the Complaint to include them.

8. Rocmen and DiCecilia are collectively referred to as "Defendants."

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

9. Upon information and belief, since at least December 1999, Defendants have been engaged in the advertising and sale of used motor vehicles in the State.

10. Upon information and belief, Defendants advertise to consumers in this State through various mediums including, but not limited to, print advertisements in Auto Shopper magazine and internet advertisements on [www.autoshopperonline.com](http://www.autoshopperonline.com).

## COUNT I

### **VIOLATIONS OF THE CFA BY DEFENDANTS (UNCONSCIONABLE COMMERCIAL PRACTICES)**

11. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 10 above as if more fully set forth herein.

12. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing [] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....

13. In the operation of their used car dealership, Defendants have engaged in unconscionable commercial practices including, but not limited to:

- a. Misrepresenting to consumers that a governmental entity requires the automotive dealer to perform any documentary service;
- b. Failing to disclose prior motor vehicle damage that Defendants knew or should have known existed; and
- c. Altering and/or falsifying Retail Buyer's Orders without consumers' knowledge.

14. Each unconscionable commercial practice by Defendants constitutes a separate violation under N.J.S.A. 56:8-2.

## **COUNT II**

### **VIOLATIONS OF THE CFA BY DEFENDANTS (FALSE PROMISES, MISREPRESENTATIONS AND KNOWING OMISSIONS OF MATERIAL FACT)**

15. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 14 above as if more fully set forth herein.

16. In the operation of their used car dealership, Defendants have made false promises and misrepresentations including, but not limited to:

- a. Misrepresenting to consumers that a governmental entity requires the automotive dealer to perform certain documentary services;
- b. Misrepresenting the price of motor vehicles;
- c. Misrepresenting the condition of used motor vehicles by failing to disclose prior motor vehicle damage that Defendants knew or should have known existed;
- d. Failing to disclose prior motor vehicle damage that Defendants knew or should have known existed; and
- e. Misrepresenting and/or altering information contained in Retail Buyer's Orders without consumers' knowledge.

17. Each false promise and misrepresentation by Defendants constitutes a separate violation under N.J.S.A. 56:8-2.

## **COUNT III**

### **VIOLATIONS OF THE MOTOR VEHICLE ADVERTISING REGULATIONS BY DEFENDANTS**

18. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 17 above as if more fully set forth herein.

19. The Regulations Governing Motor Vehicle Advertising, N.J.A.C. 13:45A-26A.1 et seq., promulgated pursuant to the CFA (hereinafter "Motor Vehicle Advertising Regulations"), among other things, prohibit certain general advertising practices in connection with the sale or lease of motor vehicles within the State.

20. Defendants are "dealer[s]" engaged in the sale or lease of motor vehicles within the definition of N.J.A.C. 13:45A-26A.3.

21. Defendants are "advertiser[s]" within the definition of N.J.A.C. 13:45A-26A.3, and are therefore governed by the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.1 et seq.

22. N.J.A.C. 13:45A-26A.5(b) provides, in pertinent part, that the following information must be included in any advertisements offering a used motor vehicle for sale at an advertised price:

1. The actual odometer reading as of the date the advertisement is placed for publication; and
2. The nature of prior use unless previously and exclusively owned or leased by individuals for their personal use. . .

23. N.J.A.C. 13:45A-26A.7(a), among other things, provides that in any type of motor vehicle advertising, the following practices are unlawful:

1. The use of any type size location, lighting, illustration, graphic depiction or color so as to obscure or make misleading any material fact;  
.....
5. The failure to state the applicable time period of any special offer, in at least 10-point type immediately adjacent to the special offer, unless the special offer is a manufacturer's program  
.....

7. The failure to disclose that the motor vehicle has been previously damaged and that substantial repair or body work has been performed on it when such prior repair or body work is known or should have been known by the advertiser; for the purposes of this subsection, substantial repair or body work shall mean repair or body work having a retail value of \$1,000.00 or more

24. Defendants violated the Motor Vehicle Advertising Regulations by engaging in certain conduct, including, but not limited to:

- a. Failing to include in motor vehicle advertisements the actual odometer reading as of the date the advertisement is placed for publication (N.J.A.C. 13:45A-26A.5(b)(1));
- b. Failing to include in motor vehicle advertisements the nature of prior use of motor vehicles when such prior use is known or should have been known (N.J.A.C. 13:45A-26A.5(b)(2));
- c. Engaging in the use of type size, location, illustration, graphic depiction or color to obscure or make misleading any material fact in motor vehicle advertisements (N.J.A.C. 13:45A-26A.7(a)(1));
- d. Failing to state the applicable time period of any special offer, in at least 10-point type immediately adjacent to the special offer (N.J.A.C. 13:45A-26A.7(a)(5)); and
- e. Failing to disclose that the motor vehicle has been previously damaged and that substantial repair or body work has been performed on it when such prior repair or body work is known or should have been known by the advertiser (N.J.A.C. 13:45A-26A.7(a)(7)).

25. Each violation of the Motor Vehicle Advertising Regulations by Defendants is a per se violation of the CFA, N.J.S.A. 56:8-2.

#### COUNT IV

#### **VIOLATIONS OF THE AUTOMOTIVE SALES PRACTICES REGULATIONS BY DEFENDANTS**

26. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 25 above as if more fully set forth herein.

27. The Regulations Governing Automotive Sales Practices, N.J.A.C. 13:45A-26B et seq. (hereinafter "Automotive Sales Practices Regulations"), establish practices involving the sale of motor vehicles that are prohibited as unlawful under the CFA.

28. Defendants are "automotive dealer[s]" within the definition of N.J.A.C. 13:45A-26B.1.

29. The Automotive Sales Practices Regulations provide, in pertinent part, that it shall be unlawful for an automotive dealer to:

Represent[] to a consumer that a governmental entity requires the automotive dealer to perform any documentary service.

[N.J.A.C. 13:45A-26B.2(a)(2)(ii).]

30. Defendants violated the Automotive Sales Practices Regulations by engaging in certain conduct, including, but not limited to, falsely representing to consumers that a governmental entity required Defendants to perform certain documentary service (N.J.A.C. 13:45A-26B.2(a)(2)(ii).).

31. Each violation of the Automotive Sales Practices Regulations by Defendants is a per se violation of the CFA, N.J.S.A. 56:8-2.



## COUNT V

### VIOLATIONS OF THE USED CAR LEMON LAW AND USED CAR LEMON LAW REGULATIONS BY DEFENDANTS

32. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 31 above as if more fully set forth herein.

33. The Used Car Lemon Law ("UCLL"), N.J.S.A. 56:8-67 et seq. and the Used Car Lemon Law Regulations promulgated thereunder ("Used Car Lemon Law Regulations"), N.J.A.C. 13:45A-26F.1 et seq., apply to the sale of used motor vehicles.

34. The UCLL, N.J.S.A. 56:8-80, provides the Director with the authority to establish certain fees to apply to the administration and enforcement of the UCLL. Specifically, N.J.S.A. 56:8-80 provides:

The director may establish an administrative fee, to be paid by the consumer, in order to implement the provisions of this act, which fee shall be fixed at a level not to exceed the cost for the administration and enforcement of this act.

[N.J.S.A. 56:8-80.]

35. The UCLL Regulations established the "Fifty Cent Rule" which provides as follows:

- a. At the time of sale a dealer shall collect an administrative fee of \$0.50 from each consumer who purchases a used motor vehicle in the State of New Jersey...
- b. On the 15<sup>th</sup> of January, April, July and October, a dealer shall mail to the Used Car Lemon Law Unit, the following:
  1. A check or money order made payable to the 'New Jersey Division of Consumer Affairs,' in an amount equal to the total sum of administrative fees collected during the preceding three-month period;...

[N.J.A.C. 13:45A-26F.6(a)-(b)(1).]

36. The UCLL Regulations further establish certain reporting requirements for used motor vehicle dealerships as follows:

- b. On the 15<sup>th</sup> of every January, April, July and October, a dealer shall mail to the Used Car Lemon Unit, the following:

....

- 2. Documentation of each used motor vehicle subject to the Act and this subchapter which was sold by the dealer during the preceding three-month period.

[N.J.A.C. 13:45A-26.F6(b)(2).]

37. Defendants are “dealer[s]” engaged in the sale, or offering for sale, of used motor vehicles within the definition of N.J.A.C. 13:45A-26F.2.

38. Defendants have violated the UCLL’s Fifty Cent Rule and the accompanying reporting requirement by engaging in certain conduct, including, but not limited to:

- a. Failing to timely pay the Used Car Lemon Law Fee for the first and second quarters of 1999;
- b. Failing to timely pay the Used Car Lemon Law Fee for the first and second quarters of 2000;
- c. Failing to timely pay the Used Car Lemon Law Fee for the first, second and third quarters of 2001;
- d. Failing to timely pay the Used Car Lemon Law Fee for the first and second quarters of 2002;
- e. Failing to timely pay the Used Car Lemon Law Fee for the first, second and third quarters of 2003;
- f. Failing to timely pay the Used Car Lemon Law Fee for the first, second, third and fourth quarters of 2004;
- g. Failing to timely pay the Used Car Lemon Law Fee for the first quarter of 2005;

- h. Failing to pay the Used Car Lemon Law Fee for the third quarter of 2005; and
- i. Failing to provide proper documentation of each used motor vehicle sold during the preceding three month period.

39. Each failure by Defendants to remit payments and/or the Certifications constitutes a separate violation of the UCLL, N.J.S.A. 56:8-80, and the UCLL Regulations, N.J.A.C. 13:45A-26F.6(a)-(b)(2).

### **COUNT VI**

#### **VIOLATIONS OF THE CFA, MOTOR VEHICLE ADVERTISING REGULATIONS, AUTOMOTIVE SALES PRACTICES REGULATIONS UCLL AND UCLL REGULATIONS BY DEFENDANT DICECILIA**

40. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 39 above as if more fully set forth herein.

41. At all relevant times, DiCecilia has been an officer and/or director of Rocmen and has controlled and directed the activities of that entity.

42. DiCecilia is personally liable for the violations of the CFA, Motor Vehicle Advertising Regulations, Automotive Sales Practices Regulations, UCLL and UCLL Regulations committed by Rocmen.

### **PRAYER FOR RELIEF**

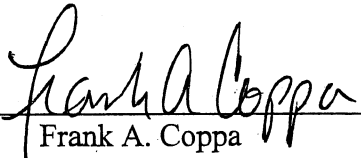
WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter relief as provided by law, including, but not limited to the following:

- (a) Finding that the acts and omissions of the Defendants constitute unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Regulations Governing Automotive Sales Practices, N.J.A.C. 13:45A-26B et seq., the Used Car Lemon Law, N.J.S.A. 56:8-67 et seq., and the Used Car Lemon Law Regulations, N.J.A.C. 13:45A-26F.1 et seq.
- (b) Permanently enjoining the Defendants and their officers, directors, shareholders, founders, owners, agents, servants, employees, sales representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons of entities directly under their control or under common control with them and all other persons or entities in active concert or participation with them, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Regulations Governing Automotive Sales Practices, N.J.A.C. 13:45A-26B et seq., the Used Car Lemon Law, N.J.S.A. 56:8-67 et seq., and the Used Car Lemon Law Regulations, N.J.A.C. 13:45A-26F.1 et seq.
- (c) Directing the assessment of restitution amounts against the Defendants to restore any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against the Defendants, jointly and severally for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of costs and fees, including attorneys' fees, against the Defendants, jointly and severally, for use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19;
- (f) Directing the Defendants, jointly and severally, to pay to the New Jersey Division of Consumer Affairs any and all delinquent Used Car Lemon Law fees and to submit all necessary documentation pursuant to N.J.S.A. 56:8-80 and N.J.A.C. 13:45A-26F.6; and

(g) Granting such other relief as the interests of justice may require.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: \_\_\_\_\_

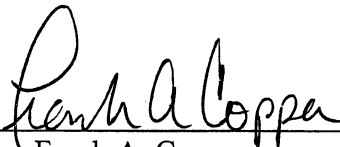
  
Frank A. Coppa  
Deputy Attorney General

Dated: December 2, 2005  
Newark, New Jersey

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the Used Car Lemon Law, N.J.S.A. 56:8-67 et seq. and the accompanying regulations, is not the subject of any other action pending in any other court of this State. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Frank A. Coppa  
Deputy Attorney General

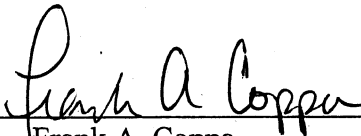
Dated: December 2, 2005  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Frank A. Coppa, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiffs.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: \_\_\_\_\_



Frank A. Coppa  
Deputy Attorney General

Dated: December 2, 2005  
Newark, New Jersey